

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3867 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIPAK KANAIYALAL JAISWAL

Versus

DISTRICT MAGISTRATE

Appearance:

MR DR BHATT for Petitioner

MR. NIGAM SHUKLA, Addl. G.P. for the respondentns.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 30/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the petitioner's detention order dated 25.4.1996 passed by the District Magistrate, Baroda, whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985. The detention order was executed on 27.4.1996 and since then the petitioner is under detention lodged at Porabandar District Jail, Porbandar.

The present Special Civil Application was filed on 3.6.1996 and on 5.6.1996 rule returnable for 24.6.1996 was issued. So far neither any reply has been filed nor affidavit of the detaining authority has been filed.

The grounds of detention enclosed with the detention order show that five criminal cases were registered against the petitioner at Vagodia Police Station under the Bombay Prohibition Act. The detaining authority has mentioned that series of prohibition cases registered against the petitioner has made no impact on him. The petitioner takes law and order in his hands and is engaged in the business of sale of unauthorised liquor. He was a headstrong person with revengeful attitude, was a bootlegger and because of his dadagiri and threats no was prepared to give report against the petitioner. The detaining authority has also considered the statements made by three witnesses against the petitioner's anti-social activities, public beating and abuses hurled by the petitioner to the witnesses, allegations of use of weapons made including that of Rampuri knife and taking the petitioner to be a bootlegger and looking to his anti-social activities and that the petitioner has become a problem for public order, the detention order has been passed.

The detention order has been challenged on more than one grounds but at the time of arguments the learned counsel kept his arguments confined to the question that the allegations and the material relied upon by the detaining authority against the petitioner did not constitute a case of breach of public order and at the most it could be said to be a case of breach of law and order only.

I have considered the submissions made on behalf of both the sides. In view of the reasons given in the decision dated 4.10.1996 of this court rendered in Special Civil Application No. 3879 of 1996, the allegations and material as have been relied upon in the instant case even if taken to be true cannot be said to constitute a case of breach of public order. It is at the most a case of breach of law and order for which ground the detention order could not be passed. The case is fully covered by the decision dated 4.10.1996 mentioned above and the impugned order cannot be sustained in the eye of law.

Accordingly the Special Civil Application is

allowed and the impugned detention order dated 24.4.1996 passed by the District Magistrate, Baroda, is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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